

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND**

DAVID BOWLES

*

Plaintiff,

*

v.

* **Case No.: 8:17-cv-01877-GJH**

DIAMOND STATE TRUCKING, INC., ET AL. *

Defendant.

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**DEFENDANTS' MOTION TO DISMISS, OR FOR OTHER RELIEF,
PURSUANT TO RULE 37(b)**

Defendants, Diamond State Trucking, Inc. and Jimmy Dean Wilson, hereby by and through its attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, and pursuant to Rule 37(b) moves for an Order of Dismissal as to all Claims by plaintiff, or for other relief the Court deems appropriate. As grounds, Defendants state as follows:

Defendants filed a Motion to Compel Discovery Responses and Plaintiff's Rule 26 Designation [Document No. 20] which was granted on November 28, 2017 [Document No. 23]. Pursuant to the Order granting Defendant's Motion, Plaintiff was required to produce Answers to Interrogatories, Responses to Request for Production of Documents and any Rule 26 Expert disclosure by December 15, 2017. Plaintiff has failed to comply with this Court's Order, and Defendants herein move for dismissal under Rule 37(b) as authorized by this Court's Order.

In the alternative, Defendants requests such other relief as this Court deems appropriate including but not limited to:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination. Fed. R. Civ. P. 37(b)(2)(A)(i)-(vii).

Defendants have been prejudiced by Plaintiff's failure to provide discovery on the issue of liability and damages. Counsel for Plaintiff contacted the undersigned on December 15, 2017 and advised that he has been unable to locate his client, despite multiple attempts. As the plaintiff has abandoned his claims, Defendants respectfully submits that dismissal is proper.

WHEREFORE, Defendants respectfully requests that this Court grant its Motion to Dismiss, Or For Other Relief, Pursuant to Rule 37.

Dated: December 20, 2017

Respectfully Submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

/s/ Brigitte J. Smith
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss, or For Other Relief, was served, via ECF on December 20, 2017 upon the following:

Jason E. Miles, Esquire
Law Offices of J. Eugene Miles, Esquire
711 Saint Paul Place
Baltimore, Maryland 21202
Attorney for Plaintiff

/s/ Brigitte J. Smith
Brigitte J. Smith